

EXHIBIT 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESAR)
FERNANDEZ-RODRIGUEZ,)
ROBER GALVEZ-CHIMBO,)
SHARON HATCHER,) No.
JONATHAN MEDINA, JAMES) 20 Civ. 3315(ER)
WOODSON, individually)
and on behalf of all)
others similarly)
situated,)
Petitioners,)
)
vs.)
)
MARTI LICON-VITALE, in)
her official capacity)
as Warden of the)
Metropolitan)
Correctional Center,)
Respondent.)
-----)

VIDEOCONFERENCE DEPOSITION OF
CHARISMA EDGE
Wednesday, May 20, 2020

Reported By:

CATHI IRISH, RPR, CRR, CLVS, CCR

1 | EDGE

2 but acting warden Hazelwood did not yet
3 arrive?

4 A. Yes. I'm trying to remember
5 her -- what day she actually look leave.
6 It was a day or so before Mr. Hazelwood
7 arrived, yes.

8 Q. Okay. So when did the MCC first
9 start any type of planning to address a
10 potential outbreak of COVID-19 at the
11 facility?

12 A. I don't recall initially the date
13 for the planning.

14 Q. Do you recall the month when
15 planning first started?

16 A. March.

17 O. Do you recall when in March?

A. It was the latter part of March.

19 Q. The second half of March, would
20 that be fair to say?

A. That's fair to say.

22 Q. Did you get some exhibits a few
23 hours before this deposition started?

24 A Yes

Q. And do you have them in front of

1 | EDGE

2 point?

3 A. This is the first time I'm seeing
4 it.

5 Q. Were you aware of the Federal
6 Defenders of New York making the request
7 reflected at the bottom of the e-mail for
8 David Patton for information about the
9 MCC's planning for COVID-19?

10 A. No.

Q. We can put that away.

As of March 15th of 2020, is it
accurate to say that the MCC did not have
any protocol in place for testing inmates
for COVID-19?

16 A. You're saying beginning March
17 15th, did we do any testing?

18 Q. Did you have any protocol in
19 place for how, if at all, you would test
20 inmates prior to March 15th?

A. Not that I'm aware of.

Q. When is the first time the MCC has had test kits available to conduct tests to process either within the MCC or through a commercial lab for COVID-19?

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2 attention so that's what I recall about
3 conversations related to placement.

4 Q. It's just important for the
5 deposition that the record be clear so I
6 just want to make sure it is.

7 Are you saying you do not
8 remember having any conversations about
9 whether it was medically appropriate to
10 house inmates who had COVID-19 in the
11 special housing unit?

12 MS. ROVNER: Objection.

13 BY MR. DEVLIN-BROWN:

Q. You can answer.

15 A. What I 'm saying is the words
16 "medically appropriate," I do not recall
17 those words being used but I do recall
18 discussing whether or not inmates would
19 have medical attention, would medical be
20 available, that's what I recall.

Q. Do you recall anyone at the MCC recommending that inmates with COVID-19 not be sent to the special housing unit?

A. I do not recall that suggestion.

25 MR. DEVLIN-BROWN: Could you take

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2 contact investigations are recommended or
3 should be done when there is a positive
4 case.

5 Q. To be clear, in this case
6 reflected in the memo in Exhibit 4, you do
7 not know one way or the other if a contact
8 investigation was ever conducted with
9 respect to which staff this positive
10 inmate had contact with?

11 A. No, I do not know about the
12 contact investigation.

13 Q. So this first inmate who was
14 determine by the MCC to have COVID-19 was
15 housed on 11 South; is that correct?

16 A. Yes.

17 Q. And that's a dormitory unit; is
18 that right?

19 A. That's right.

20 Q. Do you know approximately how
21 many inmates 11 South holds when it's
22 fully occupied?

23 A 156 inmates

24 Q. Was it at or near full occupancy
25 at the time of this incident?

1 EDGE

2 A. I don't know of the numbers or
3 the capacity at that time.

4 Q. Following the diagnosis of this
5 first inmate with COVID-19, what steps
6 were taken to identify, if any, who on
7 11 South among the inmate population had
8 contact with this inmate?

9 A. You're asking about the inmates
10 who came in contact with the inmate who
11 was removed, placed on G?

12 Q. Yeah, I'm asking if to your
13 knowledge there was any effort by the MCC
14 to identify those inmates on 11 South who
15 had been in close contact with the patient
16 who had been first identified as having
17 COVID-19.

18 A. I don't know about any contact
19 investigation. What I do know is that the
20 entire unit was placed on quarantine as a
21 precaution.

22 Q. So to be clear, by placing the
23 entire unit on quarantine, does that mean
24 no inmates who were then residing on
25 11 South were moved from 11 South to

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another unit and no one came into 11 South
from outside that unit?

4

A. That is correct.

5

Q. When did that quarantine go into
effect in terms of how quickly after this
first case was diagnosed?

8

A. Well, to my recollection, as soon
as it was discovered that the inmate was
positive or asymptomatic, then the
quarantine was immediately placed in
effect.

13

Q. Do you recall any efforts other
than putting a quarantine on the entire
unit to determine which inmates may have
been in close contact with the infected
person?

18

A. I do know -- I am not aware about
the contact investigation aspect. I am
aware of the quarantine aspect.

21

Q. Do you recall any discussion
about whether or not to move inmates who
had close contact with the affected inmate
out of 11 South to isolation themselves?

25

A. I don't recall if there was

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2 another inmate related to the 11 South,
3 whether they were placed on isolation but
4 again the entire unit was placed on
5 quarantine status for precaution.

Q. Following the diagnosis on March 23rd, were any steps implemented to provide additional protective equipment to the inmates on 11 South?

10 A. Additional PPE, are you referring
11 to masks?

12 Q. It wasn't a great question. Let
13 me break it down.

Prior to March 23rd, the inmates
on 11 South did not have masks; is that
correct?

A. That is correct.

18 Q. When were masks first issued to
19 inmates on 11 South?

20 A. Masks were issued to the inmate
21 population I believe sometime in April.

22 Q. Was there any increase in the
23 amount of sanitation supplies, soap,
24 cleaning equipment provided immediately
25 after this original case on March 23rd to

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2 A. Indicated by a regularly
3 scheduled basis, we have meetings Monday
4 and every Friday and during portions of
5 those meetings we do have a portion set
6 aside for COVID so I would say yes, a
7 regularly scheduled basis.

8 Q. Who's at these meetings on Monday
9 and Friday?

A. The executive staff.

11 Q. And who is the executive staff,
12 what does that consist of?

13 A. The warden, all the associate
14 wardens, the executive assistant and the
15 captain, and the psychologist is there as
16 well, medical is there, and if there's
17 something that specifically we need
18 clarification on they may stay but there's
19 a portion where they do step out and those
20 are the participants of the meeting.

21 O. Who is there for medical?

22 A. The health services -- at this
23 time the health services -- excuse me, the
24 assistant health services administrator
25 but he's on leave, the health services

1 | EDGE

2 received any RIS request, again prior to
3 COVID-19, that I'm aware of. They all
4 happened after COVID.

5 Q. Since the COVID pandemic has
6 arrived, can you estimate how many times
7 the MCC has filed a motion for
8 compassionate release based on requests
9 from the inmate?

10 A. That I don't. I'm not aware how
11 many times we filed a motion.

12 Q. Are you aware of any one way or
13 the other?

14 A. I don't recall there being any
15 approved based on the MCC -- from the
16 institution standpoint to file a motion,
17 I'm not aware of any.

18 Q. How, if at all, has the
19 compassionate release evaluation changed
20 since the COVID pandemic in terms of
21 factors that the MCC considers in
22 evaluating applications, if it has?

23 A. I know there is a AG memo
24 indicating there should be a heightened
25 increase use for -- that's for home

EDGE

submitted or reviewed for home confinement and it's approved, then there's no need to then continue the reviews for compassionate release because the vulnerability to that inmate no longer exists if they have been approved for home confinement. So the two home confinement and compassionate release are two separate, they fall under two separate authorities, whereas home confinement is a review based on from the institution's perspective, whereas compassionate release the warden make a recommendation, it's sent to central office, and then the director coordinates with the United States Attorney's Office and they make a motion to the court. So those are two separate processes.

Q. Okay. In terms of the time it takes to review a compassionate release application, is it fair to say a backlog of such applications developed because of the volume of inmates filing them following the COVID-19 pandemic?

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2 A. Yes.

3 Q. Were you recently able to
4 accelerate your review of those and clear
5 the backlog?

6 A. Yes.

7 Q. And how did you do that?

8 A. How did we clear the backlog?

9 Q. Did you receive additional staff
10 or other tools that enabled you to clear
11 the backlog in recent weeks?

12 A. The staff that we currently have
13 did the review and that's how the backlog
14 was cleared.

15 Q. So the staff that would
16 ordinarily review these things simply
17 reviewed them more quickly; is that fair
18 to say?

19 MS. ROVNER: Objection.

20 THE WITNESS: That's fair to say.

21 BY MR. DEVLIN-BROWN:

22 Q. Let's turn to home confinement
23 which I think you were referring to before
24 as well.

25 Actually sorry, before I get

1 | EDGE

2 first.

3 A. Pre-COVID, we have a system
4 called Insight and it's a database that's
5 generated or initiated from the unit team
6 secretary and it's an RRC or residential
7 reentry center referral and so home
8 confinement and RRC are acronyms, they are
9 processed the same way. Home confinement
10 is then determined from the RRM, the
11 residential reentry manager based on the
12 RRC referral, if you will.

13 Q. Okay.

14 | A. Yeah, a database.

15 Q. Okay. So how has the home
16 confinement review process changed since
17 the COVID-19 pandemic?

18 A. Well, I would say with the
19 guidance of the Attorney General's memo,
20 we've been given a more stringent -- I
21 won't say stringent but criteria to
22 specifically increase the use of home
23 confinement.

24 MR. DEVLIN-BROWN: If I could
25 show you what's been marked as Exhibit

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2 this was definitely discussed.

3 Q. Okay. What do you remember about
4 discussions you had about implementing the
5 memo?

6 A. I had a discussion with
7 Mr. Demosthenes about processing home
8 confinement in an expeditious manner.

9 Q. I mean the memo provides the BOP
10 with authority to release inmates on home
11 confinement who would have been ineligible
12 before; right?

13 A. What do you mean by ineligible?
14 My understanding is not that we would take
15 an ineligible inmate and make him
16 eligible. My understanding is that we
17 would make greater use of it but I don't
18 believe that it would be a fair assessment
19 that an ineligible inmate would now be
20 eligible.

21 Q. To be clear, are you saying that
22 in your view, the only inmates who would
23 be eligible for release after this memo
24 would be the same inmates who were
25 eligible for release before?

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EDGE

2 A. Yes. My understanding is not --
3 is to increase the use or to run rosters
4 and to maybe perhaps review people faster
5 or quicker and not wait for the specific
6 time frame because as I already indicated,
7 home confinement is generated, the review
8 process is the same as the RRC packet and
9 typically inmates are reviewed for halfway
10 house placement based on a certain time
11 frame, like 17 to 19 months they are
12 reviewed, but this to me indicated that
13 the review process should be immediate but
14 it doesn't say, my understanding is not
15 that an ineligible inmate would be deemed
16 eligible.

17 Q. Was vulnerability to COVID-19 a
18 factor in releasing on home confinement?

19 A. Yes.

20 Q. And was that a factor before this
21 memo or only after this memo?

22 A. Well, COVID-19 didn't exist prior
23 to the memo so I would say that as a
24 result of this memo.

25 Q. Well, you had already had a

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2 THE VIDEOGRAPHER: We're going
3 off the record at 3:08 p.m. This
4 marks the end of media unit 2.

7 THE VIDEOGRAPHER: We're back on
8 the record at 3:21 p.m. This marks
9 the beginning of media 3.

10 BY MR. DEVLIN-BROWN:

11 Q. Okay, so Ms. Edge, before we took
12 a break, I had asked you if you had
13 concerns about how the home confinement
14 process was implemented at the MCC
15 following Attorney General Barr's memo.
16 You had said that you did have concerns
17 and I asked you what they were and you
18 said the reviews were not being done.

19 Can you explain what you mean by
20 that?

21 A. Meaning the staff that are
22 responsible for reviewing the request were
23 not available to review the request. They
24 were reassigned.

25 O. And which staff were these by

1 | EDGE

position and name?

3 A. The case managers, they conduct
4 the review so those case managers would be
5 Flores -- and again the first names I'm
6 not familiar with because we call
7 everybody by their last names -- so that
8 would be Flores, Jenkins-Cardew, Olivares.

9 Q. Did you say the case managers
10 were reassigned?

11 A. Yes.

12 Q. Reassigned to what?

13 A. To work custody.

O. And work custody means what?

15 A. Meaning that custody they were
16 working correctional posts.

17 Q. Okay. Did that happen to a large
18 number of case managers?

A. All of the case managers.

20 Q. And do you know why they were
21 reassigned to that?

22 A. A decision was made to implement
23 a 12-hour roster and to utilize
24 non-custody staff which included unit team
25 staff.

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2 Q. When was that decision made?

3 A. The decision was made the latter
4 part of March and then it was implemented
5 April 5th.

6 Q. So it was implemented shortly
7 after the Attorney General's memo came
8 down?

9 A. Yes.

10 Q. Did you know that the case
11 managers were being reassigned to
12 corrections posts?

13 A. I did not know until I received
14 the e-mail along with everyone else.

15 Q. What e-mail are you referring to?

16 A. The e-mail indicating that staff
17 will be reassigned.

18 Q. I see. And did that e-mail, that
19 e-mail came down in late March to be
20 effective April 5th if I understand you.

21 A. Correct.

22 Q. So as of the time the Attorney
23 General's memo was issued on April 4th,
24 did you understand at that time these case
25 managers were not going to be available to

1 | EDGE

2 do the review in a timely manner?

3 A. Well, the memo, the AG memo was
4 April 3rd, not April 4th, and when the
5 memo was sent out or disseminated, I
6 didn't know to the extent that it would
7 impact or how many of my staff would be
8 reassigned.

9 Q. And when did you figure out how
10 big an impact it would have on your staff?

11 A. The date that it became
12 effective.

13 Q. Did that give you concerns right
14 away that there was going to be delay in
15 processing home confinement?

16 A. Yes.

17 Q. Did you express your concerns to
18 anyone?

19 A. Yes.

20 Q. To whom?

21 A. To the warden.

22 Q. To the warden or acting warden or
23 both?

24 A. To both.

25 | O. Tell me about what you told the

1 | EDGE

2 warden.

3 A. That I needed the staff in order
4 to do the work, simple.

5 Q. What was her response?

6 A. That it was -- it wasn't a direct
7 response but ultimately I didn't get the
8 staff.

9 Q. What response did she give you
10 exactly?

11 A. That the staff would not be
12 returning in addition to other, you know.

13 Q. In addition to what?

14 A. In addition to other -- just the
15 staff would not be returned. They would
16 be utilized on the custody roster.

17 Q. Did she give you any suggestions
18 about how to process the cases given that
19 the staff were going to be used for the
20 custody roster?

21 A. No.

22 Q. What did you do after she told
23 you that the staff would not be coming
24 back to support that?

25 A. I had a conversation with

1 | EDGE

2 Mr. Demosthenes and he and I did the best
3 we could with the request.

4 Q. What was Mr. Demosthenes's
5 reaction?

6 A. He was puzzled as to how we would
7 get all the requests done in the time
8 frame.

9 Q. I'm trying to figure out when the
10 warden went on leave. It was around this
11 time; right?

12 A. We received -- Mr. Hazelwood
13 reported to us April 9th so her last day
14 was maybe -- what day is April 9th?

15 Q. I can figure it out.

16 A Thursday.

17 A. Thursday. So I think there was
18 an e-mail sent out maybe like a couple
19 days prior to that she would not be at
20 work.

21 Q. So when the acting warden
22 Hazelwood arrived, did you on April 9th,
23 did you communicate with him about this?

24 A. I don't remember if it was
25 April -- I probably did tell him April 9th

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2 but I know I communicated it early on
3 after having a meeting.

4 Q. Was this just a one-on-one
5 meeting with you and him or were there
6 other people there?

A. There were other people there.

8 O. The executive staff?

9 A. Correct.

10 Q. And what did you tell the acting
11 warden at that meeting about your
12 situation?

13 A. That I needed unit team staff to
14 process RIS in addition to just their
15 regular work.

16 Q. And what did he say?

17 A. That unit team staff, this is not
18 verbatim, you know.

20 A. In essence, unit team staff, they
21 would be utilized on the custody roster.

22 Q. Did he give you any other
23 suggestions about how you might find the
24 resources to process these cases?

25 A. N. 8.

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2 Q. Did you raise it with anyone else
3 at the MCC, your concerns?

5 Q. Who else?

6 A. When -- well, exec staff knew
7 about it. Those are my peers. I
8 definitely didn't discuss it with any
9 support with the exception of
10 Mr. Demosthenes because he was directly
11 involved, and obviously he knew what was
12 going on because he was doing the work of
13 someone else but the attorneys new as
14 well.

Q. The MCC attorneys?

16 A. Yes.

17 Q. Did you write any e-mails or
18 memos or anything about your concerns?

A. I did write some e-mails.

20 Q. To who, other than the attorneys,
21 to who?

22 | A. The exec staff.

23 Q. Do you know the date of those
24 e-mails or would you be able to figure it
25 out?

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2 Q. Were you satisfied that that was
3 a good explanation?

4 A. No.

5 Q. Why not?

6 A. Because I know that they could --
7 they didn't have to be in custody.

8 Q. Why did you think they didn't
9 need to be in custody?

10 A. There could have been someone
11 else to work in their place.

12 Q. You didn't think that the MCC was
13 so short-staffed that they had no choice
14 but to assign these people to the custody
15 roster?

16 A. The staff didn't have to be in
17 custody. Those particular individuals did
18 not have to be in custody.

19 Q. So did you eventually get help
20 that you needed from this?

21 A. Yes.

22 Q. When did you get help?

23 A. When the staff returned.

24 Q. And when was that?

25 A. I believe it was April 26th.

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2 Q. Can you just explain to me sort
3 of how it was done?

4 A. We identified some inmates
5 that -- we ran a roster and some inmates
6 were identified either by the Office of
7 General Counsel and then the Office of
8 Research, I forgot the acronyms, Office of
9 Research, and then there was a roster
10 generated, some inmates identified as
11 possibly meeting the criteria and we were
12 instructed to review those inmates. In
13 addition, there was an at-risk list that
14 was identified and then those inmates were
15 reviewed.

16 Q. And when did that review take
17 place?

A. The at-risk list?

19 O. Yeah.

20 A. They happened at different times,
21 we receive the information at different
22 times so when the Regent sent us the
23 information, it had to be sometime in
24 April, the beginning of April.

25 Q. Okay. And just so I'm clear,

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2

this is the process that resulted in a
list of about 205 vulnerable inmates?

4

A. I don't know if it was 205 but it
was an extensive list.

6

Q. How did the MCC use that data on
inmates being in this vulnerable category,
how did it factor into the decision the
MCC makes as to where to house them or any
number of things?

11

A. Well, 11 South was identified as
an area or a housing unit that would
probably be better for them because it's a
dorm setting and a decision was that it
would just be a little -- that environment
is a little bit more amenable to the -- I
would say the high risk inmates so we did
try to group all of those quote/unquote
high risk inmates together in one location
as opposed to throughout the institution.

21

Q. And that was before the first
cases of COVID in the facility?

23

A. Yes.

24

Q. Okay. All right, turning to
sanitation which I think is one of the

1 EDGE

2 Q. I guess -- what do they wipe it
3 down with, like paper towels or is there
4 cloth rags or what?

5 A. Cloth rags.

6 Q. Okay. So what about masks for
7 the inmates, were you involved at all in
8 decisions about ordering masks and
9 providing masks to inmates?

10 A. I was not involved in ordering
11 the masks, that was guidance, that was
12 sent down from -- we had no -- no decision
13 internally. That was decided for us. So
14 the masks, you receive the masks and you
15 distribute the masks.

16 Q. And initially the masks given to
17 the inmates were what kind of masks?

18 A. They were the surgical masks.

19 Q. Do you know how often they were
20 provided to the inmates?

21 A. Once a week.

22 Q. How many masks a week?

23 A. One mask a week.

24 Q. When did that start, if you know?

25 A. That was sometime in April.